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January 15, 2003

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98; and Deployment of Wireline Services Offering Advanced Telecommunications Capability CC Docket No. 98-147

Dear Ms. Dortch:

In the face of undisputed evidence that competitive carriers are using their own switches to serve customers, several CLECs have recently argued¹ that the Commission should nonetheless require unbundled switching and UNE-P because the "Track A" showings in the Bell companies' section 271 applications have been premised on the availability of UNE-P.²

This argument must fail, for at least two reasons. First, it is simply wrong as a matter of law. As Verizon has repeatedly shown, if the Commission determines that CLECs are not "impaired" without unbundled switching and the UNE-P, these elements no longer meet the Act's unbundling standard. And, where the impairment standard is not satisfied, the Commission cannot require an incumbent to provide access to the one element or elements at issue as an unbundled network element under sections 251 and 252.

Second, the CLECs' argument is also factually wrong. As demonstrated in the Attachment to this letter, in each of the eleven states in which Verizon has obtained section 271 relief, Verizon satisfied Track A through the presence of competitors that, both in the aggregate and on an

¹ *Ex Parte* Letter from CompTel/PACE Coalition to Marlene Dortch, FCC, CC Docket Nos. 01-338, 96-98 and 98-147 (filed December 12, 2002).

² "Track A" requires a section 271 applicant to demonstrate that it has interconnection agreements with one or more competing providers that are providing local service to residential and business customers predominantly over their own facilities. 47 U.S.C. § 271(d)(3)(A).

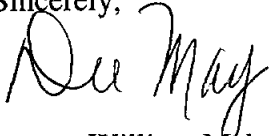
individual basis, were providing service to residential and business subscribers predominantly over facilities they deployed themselves.

The Attachment first lists the subset of individual carriers in each of Verizon's 271-approved states on which Verizon relied as part of its Track A showing and that were providing service to both business and residential customers predominantly using facilities they deployed themselves (including in all cases their own local switches). The Attachment also lists the total number of CLECs in each state that, at the time of Verizon's Application, were providing service using facilities they deployed themselves (again, using their own local switches in all cases). As Verizon has explained in each of its section 271 applications, Track A is also satisfied where competitors collectively provide service predominantly over their own facilities to both business and residential subscribers. Thus, in each of its Applications, Verizon has also demonstrated that CLECs as a whole were providing service predominantly over their own facilities to both business and residential subscribers.

As these data make clear, in each of the states for which Verizon has received section 271 authority, there were one or more carriers that provided service predominantly over facilities that it deployed itself, rather than through UNE-P. Although in some instances Verizon also identified some competitors that also provided service through the UNE-P, in no case did such carriers make up the sole or even primary component of Verizon's showing. Or put it another way, in no way was Verizon's Track A showing dependent on the presence of UNE-P. In each and every case, there were one or more carriers providing service predominantly over facilities they deployed themselves without taking any UNE-P lines into account.

Please associate this notification with the record in the proceedings indicated above. If you have any questions regarding this matter, please call me at (202) 515-2530.

Sincerely,



cc: William Maher
Michelle Carey
Tom Navin
Rob Tanner
Jeremy Miller
Claudia Pabo
Jon Reel
Gina Spade
Jerry Stanshine
Shanti Gupta
Christopher Libertelli
Matthew Brill
Jordan Goldstein
Daniel Gonzalez
Lisa Zaina

ATTACHMENT

Predominantly Facilities-Based Carriers That Satisfied Track A			
State	Competitor	Facilities-Based	
		Residential	Business
CT	Network Plus	X	X
	Total CLECs:	1	2
DE	Cavalier	X	X
	Total CLECs:	1	5
MA	AT&T	X	X
	WorldCom	X	X
	RCN	X	X
	Total CLECs:	6	9
ME	Oxford Networks	X	X
	Total CLECs:	2	9
NH	AT&T	X	X
	BayRing	X	X
	Broadview	X	X
	Total CLECs:	3	9
NJ	Broadview	X	X
	Total CLECs:	1	20
NY	AT&T	X	X
	MCI WorldCom	X	X
	Cablevision Lightpath	X	X
	Total CLECs:	6	9
PA	AT&T	X	X
	RCN	X	X

Predominantly Facilities-Based Carriers That Satisfied Track A			
State		Facilities-Based	
		Residential	Business
	CTSI	X	X
	Competitor Total CLECs:	3	25
RI	Cox	X	X
	Network Plus	X	X
	Total CLECs:	2	7
VA	AT&T	X	X
	Cox	X	X
	Comcast	X	X
	Cavalier	X	X
	Total CLECs:	14	19
VT	Adelphia Bus. Solutions	X	X
	SoVerNet	X	X
	Total CLECs:	2	4

See Application of Verizon New York Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Connecticut, Memorandum Opinion and Order, 16 FCC Rcd 14147, ¶ 70 (2001); Application by Verizon New England, et al., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware, Memorandum Opinion and Order, 17 FCC Rcd 18660, ¶ 20 (2002); Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, Memorandum Opinion and Order, 16 FCC Rcd 8988, ¶¶ 224-225 (2001); Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey, Memorandum Opinion and Order, 17 FCC Rcd 12275, ¶ 11 (2002); Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 62 (1999); Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶ 122 (2001); Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Rhode Island, Memorandum Opinion and Order, 17 FCC Rcd 3300 (2002); Application by Verizon Virginia Inc., et al., for Authorization to Provide In-Region, InterLATA Services in Virginia, Memorandum Opinion and Order ¶ 8, WC Docket No. 02-214, FCC 02-297 (rel. Oct. 30, 2002); Application by Verizon New England Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Vermont, Memorandum Opinion and Order, 17 FCC Rcd 7625, ¶ 11 (2002).